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CONTENTS

REPORTS

NOTES OF THE WEEK

Tobacco in a Loaf

The decision in *Miller (J.) Ltd.* v. *Battersea Borough Council* [1955] 3 All E.R. 279; 119 J.P. 569, laid down the principle that a piece of extraneous matter in an article of food which did not affect its composition as a whole should not lead to a prosecution under s. 9 of the Food and Drugs Act, 1938, that section being applicable to food which is unsound and unfit for human consumption. Extraneous matter would generally justify a prosecution under s. 3.

A recent case before a Sussex magistrates' court arose out of the finding of a cigarette end and strands of tobacco in a loaf of bread. The prosecution was under s. 9 and the defendant company was fined.

The evidence of the medical officer of health was no doubt what led to a conviction under s. 9. He is reported to have said that where the cigarette stub was found the bread was discoloured by the end and also with ash.

Such a stub would be contaminated with organisms from the mouth of the smoker.

The tobacco would also contain a certain amount of nicotine which might be between two and five *per cent.*

The stub possibly contained half of a lethal dose of nicotine for an adult, and if swallowed by a child might prove fatal. The whole loaf would be unfit for human consumption.

Mistaken " Kindness "

It can be assumed that everyone knows that the number of accidents on the roads gives cause for serious concern. It should be equally well appreciated that to be drunk or under the influence of drink while in charge of, or while driving or attempting to drive a motor vehicle is a serious offence. It is difficult to imagine, therefore why people should be so thoughtless and unwise as to give drinks, even at Christmas time, to a tradesman or delivery man who, as the driver of a motor vehicle, is taking goods round for delivery. It is true that the driver should not accept them, but the real remedy lies in the hands of the customers to whom delivery is being made, by their not offering the drinks.

These comments are prompted by a report in the national press of the conviction of a butcher's roundsman who was fined £3 and ordered to pay £2 2*s.* costs, and was disqualified for a year, for driving while under the influence of drink. He said he had had one rum, one sherry and one glass of beer. The indiscriminate hospitality of his customers (and his own folly) have cost this young man £5 2*s.*, and have prevented his being able to earn his living by driving for 12 months. It is to be hoped that they regret it as much as he is bound to, and that others reading the report of the case will take note of the matter and will resolve not to put temptation in the way of drivers as was done in this case.

Parish Constables

The question of appointing parish constables in Buckinghamshire, about which we had a note at p. 292 of last year's volume, has been carried a stage further. A report in the *Bucks Herald* states that at the recent quarter sessions it was decided to rescind a resolution passed in 1873, making it obligatory for villages to appoint parish constables. Twenty-four magistrates supported the resolution against six.

Sir Norman Birkett, chairman of the sessions, said that the standing joint committee had asked for the resolution, following a report from the chief constable. Since 1933, appeals to be exempted from making appointments had been received from 184 parishes, and only 30 were not now exempted. Of the latter parishes, 10 had not appointed constables for some time.

The learned chairman said the county was adequately policed by the regular and the special constabulary. Special constables were the modern successors of parish constables. He added that there were a few parishes that appeared to feel strongly on the subject, and if the 1873 resolution was rescinded it would be open to them to apply to quarter sessions and, if it were thought desirable, parish constables could then be appointed for those parishes.

There was a hint that feeling had run high in some quarters. It would be interesting to learn whether the parishes

which want to have parish constables base their desire on a not unnatural dislike of seeing an ancient office fall into disuse, or upon grounds directly connected with what they consider the best way of policing the area.

Maintenance Orders and Income Tax

As is well known, payment under small maintenance orders must be paid in full without deduction in respect of income tax. Questions do not often arise about this, but a point arose in *Jefferson* v. *Jefferson* (1955) 220 L.T. 367. This did not concern an order made by a magistrates' court, but an order for maintenance made by the Divorce Court after decree absolute. The order was for £52 a year free of tax, and the husband paid at the rate of £4 6*s*. 8*d*. a calendar month. The wife claimed that the order should be grossed up so as to give her £52 a year plus tax at the standard rate. On this contention she sued successfully for arrears, and when the case came to the Court of Appeal that Court held (Denning, L.J., dissenting) that the wife's submission was correct and the arrears were due.

What should be noted by magistrates' courts is that the Court added that orders should not be made in the form " free of tax." The order should not mention tax, but the question of tax should be taken into consideration when the amount is being determined.

The Value of Lay Justices

Among members of the public who have not studied the matter there is a widespread feeling that the administration of justice should be in the hands of professional lawyers and, as they would put it, that men and women without legal training cannot do the job properly. It must be admitted that there are also some people who have thought about the matter, and whose opinions carry great weight, who are against a system of lay justices. For our part, we believe that the best method of dealing with the question has been adopted and that stipendiary magistrates are indispensable in many places, while in the rest of the country lay magistrates, the standard of whose knowledge and efficiency has increased markedly, are showing the advantages of using the services of men and women of all walks of life to participate in the work of the courts.

Addressing newly appointed justices at the Norfolk quarter sessions, the chairman, Sir Raymond Evershed, showed his faith in lay justices. As reported in the *Eastern Daily Press* he said, " If we in England do believe in the rule of law, and if we have faith in the system of English law, we are saved by the voluntary service of magistrates such as yourselves from having a surfeit of lawyers scattered all over the country, some of them necessarily second rate as they would be if we had to rely solely upon professional judges."

Sir Raymond advised them not to be afraid of the law; they would have competent advisers and their common sense was more likely to be right in law than wrong.

Advocates of the lay justice system often contend that if stipendiary magistrates were given the whole of the work of the magistrates' courts throughout the country, it would be impossible to maintain the present high standard of appointments. They will find support in the words of the Master of the Rolls.

Inconsiderate Motorists

The car-parking problem seems at present to defy solution. We are not concerned here with the major problem but with instances of thoughtless and inconsiderate parking which cannot on any grounds be justified. We have just read a report of a motorist who parked his car for half an hour at a spot where the road was only 12 to 13 *ft*. wide while he went to have lunch at a nearby café. As a result a queue of vehicles formed up behind this parked car; a police officer could not find the driver and he had to push the car to a wider part of the road.

Our view is that no driver who has any pretentions to being considerate for the rights and convenience of other people would leave a vehicle in such a place knowing that he is going to be absent for quite a long time. This particular offender was fined £1. Presumably he was summoned under the Motor Car (Construction and Use) Regulations, which provide for a maximum fine of £20. If that is so we consider that he was lucky to be dealt with so lightly, but we appreciate that the short report we have read may not give all the relevant details of the case.

Parental Attitude

Many of the boys and girls in approved schools would not be there at all if their parents had done their duty by them. The attitude of parents in the juvenile courts and the reports from local authorities and probation officers only too often reveal parental indifference or stupidity, and it is not surprising that the children appear in court. It is constantly urged that parents should be punished rather than the children. This is possible to a certain extent, and making parents pay fines or enter into recognizances often proves effective. What the court wants to do by these or other means is something constructive for the young offenders.

The idea that a parent may be influenced through his pocket is suggested in the following paragraph from the *Approved Schools Gazette:*

" Probably the most obvious shortcomings of the boys we are now admitting to our schools is their attitude to property. Deliberate destruction for the most petty selfish ends is commonplace. Now a parish councillor, appalled at the vandalism on new housing estates, wants the good behaviour of children to be a condition of house tenancy on the analogy that the rule already exists for dogs. There is another way: more police and stiffer fines. It then becomes of at least financial interest to father what his children are doing. Training schools now receive letters asking for the early licence of their children because the parents object to the weekly charge of the local children's department."

Mirrors for Cyclists

According to a report in the daily press a local Accident Prevention Federation considered recently, and accepted, a resolution that motor cycles should be compelled to have fitted a mirror to give a view to the rear, as is required by reg. 16 of the Motor Vehicles (Construction and Use) Regulations, 1955, for all motor vehicles not specially excepted. At present proviso (*a*) to that regulation excepts " a two-wheeled motor cycle with or without a sidecar attached."

There must be a reason why motor cycles are so excepted but we do not know what it is. The object of the mirror must be to enable a driver, in the words of the regulation, " to become aware of traffic to the rear of the vehicle," and to be able to do this without having to take his eyes, except quite momentarily, off the road ahead and to the side of him. It is obviously dangerous for him to turn his head to look backwards when he is driving in traffic which is at all dense. There is, however, the same objection to the motor cyclist turning his head to look behind him, and he is just as likely to want to become aware of traffic behind him as is a car driver. Indeed there seems to be a case for saying that the pedal cyclist is in the same position, and we would like to know what are the arguments against requiring the fitting of mirrors to motor cycles and to pedal cycles. Experience on the road and, we believe, police statistics, support the idea that

a number of accidents are due to vehicles turning, particularly to the right, when an overtaking vehicle is so close behind them that it cannot avoid them. A driving mirror would give motor cyclists and pedal cyclists the opportunity of judging, without looking round, how close any overtaking vehicle was when they wished to make a turn. Is there any good reason why they should not be required to adopt this safety precaution ? We should be interested to hear whether any of our readers can give us the answer.

Accommodation for Mental Defectives

A serious state of affairs was revealed at a West Riding magistrates' court when the question of accommodation in an institution for a mental defective youth came before the court. A 19 year old defendant was charged with indecent assault upon two young girls. He was said to be unfit to plead. The hearing had been adjourned for accommodation to be found for him.

According to a newspaper report, the young man was stated to have been waiting for accommodation to be found for more than nine years, and a psychiatrist said he had 350 patients on his waiting list, while admissions of males over 16 had been only 14 in six months, of which eight were by court order, five through destitution, and one off the waiting list. There was already 26 *per cent.* overcrowding.

The case was adjourned for three months, and in the meantime the lad was allowed to go home.

If a person is in need of institutional treatment it is unfortunate that this should not be possible. There is the further point that if he did what he was charged with doing he might be regarded as a danger to young children and cause uneasiness in the neighbourhood where he lives. The chairman is reported as saying he hoped the authorities would get a move on. Without doubt they would like to do so, but the question of additional accommodation will take time.

Differential Rents

In some places, when the local authority announced its intention to provide for a scheme of differential rents of council houses, there was a great outcry from tenants who would be affected. On the other hand, there was widespread approval from ratepayers living in houses they owned or rented from landlords other than local authorities, and who asked why they should help pay the rent of council houses occupied by tenants with plenty of money coming in, often the possessors of a car and television.

An interesting sidelight on the question is found in the annual report of the housing manager of Hove council. He states that the criticism directed against differential rents at the outset died down as time went on, and by the end of the year under review the scheme was working smoothly and with the minimum of administrative difficulty.

We should like to hear what is the experience of other authorities with similar schemes.

Hard Luck and Hard Fact

The Eastbourne case, where a council tenant living alone was evicted to make room for a family, was obvious meat for the popular press. There were variants of the story. A London paper quoted him as saying that losing his home would put an end to all hope of his wife's return. A local paper said there had been a divorce a year before: since he had remained in the matrimonial home, the inference is that he was the petitioner—if this question is material. According to the *Sussex Daily News* it seems to have been common ground that he was a satisfactory tenant, who never owed rent, looked after the garden, and had done his own decorating for 12 years, and that the sole ground for the council's action was that he was now alone, and they had families waiting for a house. Such a case must attract widespread sympathy; many people will echo the remark of the chairman of the magistrates, who is reported to have asked in court: " Is there no humanity in the council? " Persons who already have a house are likely to suggest that their matrimonial affairs are no business of their landlord; that turning a tenant out because he has been through the Divorce Court savours of the paternalism of " good " country landlords in mid-Victorian times.

Yet there is another side to this, as to most other questions. Local authorities provide houses at less than cost price, and there is no prospect that houses publicly or privately erected will in any measurable future be adequate for the demand. Subsidized rents are a form of poor relief, or perhaps one should say of " public assistance," since it is not the poor alone who benefit, and the benefit is made available without the checks which used to be applied before public assistance (by that name) was abolished. Poor law authorities, and their successors the public assistance authorities, were bound to have regard to the beneficiary's need—amongst other things, and notably, to the size of families. So long as publicly provided housing retains its uneconomic basis, it is hard to deny that a local authority is morally bound to ensure that the taxpayer's bounty is available to those who need it most, even though this may involve adding to the misfortunes of a deserving tenant who has already lost his wife, by depriving him of the home where he has lived for the past 12 years.

Police Costs

The Society of County Treasurers and the Institute of Municipal Treasurers and Accountants have recently published their informative annual return about police forces. In view of what is said in certain quarters from time to time about shortage of police we have compared some of the figures with those in the first joint return published which dealt with the year 1950/51: in this short period of four years an interesting position is revealed, the figures being for the whole of England and Wales excluding the Metropolitan area:

	March 31 1951	1955
Authorized establishment	51,983	53,915
Actual strength	45,764	49,211
Civilian staff	5,132	7,345
Population per police officer on authorized establishment	681	667
Population per police officer—actual strength	773	730
Cost of police to public funds	£35,252,000	£47,906,000

There are obviously fluctuations in numbers since March 31, last, but they must be looked at in the light of the subsequent pay award effective from December 16, last.

A study of the return in detail shows that although most forces have small shortages of men, serious deficiencies are limited to a relatively small number: the largest shortage is in the area excluded from the return, *viz.* the Metropolitan. Thus, with this position and a total of 5,660 (11 *per cent.*) more persons working than four years ago, it behoves those faced with requests for increases in police establishments to satisfy themselves completely of the need before placing additional financial burdens on the public.

A number of sign-posts point the way to seekers after real economy, for example, the considerable variations in establishments as related to population between forces serving areas of comparable type. These may be justified by local factors (a very unlikely explanation of the whole

difference), or more probably either by the varying ideas of chief constables about standards of service, or by the fact that certain forces are of a size which makes them unduly costly to maintain as separate entities.

Employment of the maximum number of civilians would also help cost without loss of efficiency. The well worn arguments for their non-employment such as the necessity for secrecy on so many matters, and the necessity for clerical experience as an aid to police promotion are inclined to be overdone: here again we are satisfied that if the conservative forces brought their organization into line with those who have tried and tested more advanced ideas, the effort would be well rewarded.

All these points lead us to wonder how far the Home Office inspectors, who have a mass of information available, use their influence in ironing out expensive and unnecessary local peculiarities. If they so desired they could exert a powerful influence, but it would be necessary for them to enter a field of finance with which they may not be too familiar: no doubt also they are reluctant to appear to interfere too much with local foibles. Nevertheless, there seems a case for investigation, either by the inspectors or by O. & M. teams.

SUBMISSION OF "NO CASE" IN MATRIMONIAL CASES

We have discussed this matter previously in articles at 115 J.P.N. 178 and 111 J.P.N. 251. We refer to it again because of a letter which we have received from a correspondent, Mr. Kenneth Cooke, O.B.E., the clerk to the magistrates of the petty sessional division of Prescot, and which we published at 119 J.P.N. 852.

This matter is obviously one of importance to magistrates and to those who practice in magistrates' courts. It will be noticed that in the letter Mr. Cooke, on the authority of counsel present at the hearing, quotes the learned President of the Divorce Court as saying: "How can he get that? Over and over again this Court has ruled that the justices must put the defendant to his election. It is their duty to make him elect." It is clear from Mr. Cooke's letter that this point was not the one upon which the case went to appeal, and it seems likely, therefore, that the President's remarks are not part of the judgment in the case. Nevertheless magistrates must of course pay attention to the views expressed by a High Court Judge, even when they are *obiter*.

The difficulty we feel is in seeing how this particular matter would be likely to come to be one for the High Court to rule upon. They have clear authority to regulate, where necessary, the proceedings of inferior courts, but the procedure in magistrates' courts is governed by the Magistrates' Courts Act and Rules, of 1952. We should have thought that r. 18 is so clear as to need no interpretation by the High Court. It reads:

"18 (1) On the hearing of a complaint, except where the court determines under subs. (3) of s. 45 of the Act to make the order with the consent of the defendant without hearing evidence, the complainant shall call his evidence, and before doing so may address the court.

"(2) At the conclusion of the evidence for the complainant the defendant may address the court, *whether or not he afterwards calls evidence*. (The italics are ours.)

"(3) At the conclusion of the evidence, if any, for the defence, the complainant may call evidence to rebut that evidence.

"(4) At the conclusion of the evidence, if any, for the defence, and the evidence, if any, in rebuttal as aforesaid, the defendant may address the court

"(*a*) if he has not already done so, or

"(*b*) with the leave of the court, if the defendant and any other witness have been called on the part of the defendant.

"(5) If the defendant is allowed to address the court twice as aforesaid, the complainant may address the court in reply."

The Magistrates' Courts Act and Rules were passed and made to consolidate the law relating to summary jurisdiction. They took into account any interpretation of previously existing statutes which had been decided by High Court cases. The cases we referred to in the articles mentioned at the beginning of this article were all decided before the passing of the 1952 Act and the making of the 1952 Rules.

The Summary Jurisdiction (Married Women) Act, 1895, s. 8, provides that all applications under this Act shall be made in accordance with the Summary Jurisdiction Acts. These, as we have said, are now consolidated in the Magistrates' Courts Act, 1952, and in the Rules.

The procedure is, therefore, by complaint, and part II of the 1952 Act, "Civil Jurisdiction and Procedure" applies, together with r. 18 which we have quoted.

One would have thought that the procedure to be followed is clear. Rule 18 (2) makes no exception for the procedure in matrimonial cases and the position is that at the end of the complainant's case the defendant, if he chooses, has an absolute right to address the court, and this right does not depend in any way upon whether he afterwards calls evidence. If it had been intended by Parliament, or by the Rule Committee appointed under s. 15 of the Justice of the Peace Act, 1949, that in matrimonial cases an exception should be made to ensure that a submission of "no case" should not be made unless the defendant first elects to call no evidence it would have been the easiest thing so to provide. It has not been so provided and r. 18 would appear to regulate the procedure in matrimonial cases as it does in other civil cases in which complaint is made to a magistrates' court in accordance with the 1952 Act. In any matter affecting magistrates' courts procedure which the existing Act and Rules do not provide for and which concerns or may concern subsequent proceedings in the High Court, we can appreciate that that Court may find it necessary to lay down how the particular matter should be dealt with in the magistrates' court. We cite, for example, the matter of copy notes of evidence and reasons for magistrates' decisions. Even here we should prefer, the High Court having expressed a clear view on the point, that the Magistrates' Courts Rules should be extended as may be necessary to secure compliance with the High Court's views. But with every respect due to any observations of the learned President we fail to see why magistrates should not follow, in matrimonial as in other cases, the procedure so clearly outlined in r. 18. If they are not to do so then we think that r. 18 should be suitably modified, if indeed there is need for any such modification.

CARS STANDING WITHOUT PLATES

In P.P. 8 at 119 J.P.N. 824, we were asked to advise whether a motor car, standing in a street or other road not being a highway repairable by the inhabitants at large, needed to display the ordinary registration plates. For purposes of the query we assumed, and are assuming in this note, that the *locus in quo* is not a road to which the public have no right of access; it can be assumed that the owner of a car may stand it in his carriage drive or on an internal road in his factory or on an occupation road across his farm, without registration plates. The query arises only when the road on which it stands is a dedicated highway—typically the ordinary private street in a provincial borough, urban, or rural district. There are thousands of these, which have been open to vehicular traffic for many years (perhaps a century) but have never been taken over under the Private Street Works Act, 1892, or similar legislation. The query reveals incidentally a curiosity of legislation, and perhaps a mistake in a consolidating statute. The obligation to carry number plates used to be in s.6 of the Roads Act, 1920. This obligation was in terms general, but a provision for driving on a " public road " without plates while on the way to register the car indicated (*a*) that the car did not need them on a road that was not public; (*b*) that it did need them on public roads, apart from the exception. " Public road " was not defined, and the expression might be thought to have included all roads open to the public, as distinct from those within the boundaries of works or a private estate or a farm, or at least to have covered all highways. The Road Transport Lighting Act, 1927, contained a definition which (for its own dissimilar purpose) had this effect.

But s. 27 of the Vehicles (Excise) Act, 1949, contains a definition of " public road " which seems to limit it (though not in the usual wording) to highways repairable by the inhabitants at large. The substantive enactment in s. 6 of the Roads Act, 1920, is repealed and re-enacted by the Act of 1949, but with the definition applied to it by a later section. The Act of 1949 passed through Parliament as being pure consolidation, and we have been looking (with some curiosity) into the question how the present definition came to be there.

It seems to have come about as follows. On the first issue of a licence for a motor vehicle in accordance with s. 13 of the Finance Act, 1920 (this cross-reference is important, for a reason which will appear later), subs. (1) of s. 6 of the Roads Act, 1920, made it the duty of the county council to register the vehicle and assign a number to it. There was a proviso for continuing a number already assigned under the Motor Car Act, 1903, and still in use. Then the subsection said that a mark, indicating the registered number and the registering council, should be fixed on the vehicle. It did not say whether this fixing was the duty of the owner or the driver. *Prima facie* one would suppose the owner had to fix the mark, but the section imposed no penalty for not doing so. It went on in subs. (2) to impose a penalty for driving the vehicle without the mark, or driving it with the mark obscured or rendered or allowed to become not easily distinguishable. As we have said above, this was quite general, in that it applied on the face of it wherever the vehicle was being driven (though, it seems, not at all when it was not being driven). Then a proviso said that a person charged under the section with obscuring a mark, or rendering or allowing it to become not easily distinguishable, should not be liable to be convicted on the charge if he proved that he had taken all steps reasonably practicable to prevent the offence. Finally comes the separate paragraph, not in proviso form, mentioned above, which said that a person should not be liable to a penalty under the section if he proved that he had no reasonable opportunity of registering the vehicle, and that the vehicle was being driven *on a public road* (italics ours) for the purpose of being so registered.

The section bore on the face of it the signs of having been worked upon by different hands, and then of having reached the statute book without being co-ordinated at the usual late stage of the Bill. There was the combination of a proviso with a paragraph (in effect a proviso but not in proviso form); the use of the phrases " shall not be liable to be convicted " and " shall not be liable to a penalty " as if they meant the same thing; finally, the defence of " all steps reasonably practicable " was applied by the proviso to the second of the offences created by the subsection, whereas the defence admitted by the paragraph after the proviso makes sense in relation only to the first of those offences. It was, therefore, proper for the draftsman of the consolidating Bill which became the Vehicles (Excise) Act, 1949, to deal with the offences in separate subsections, and to tie each defence admitted by the Act of 1920 to its appropriate offence. Thus s. 19 (1) of the Act deals with driving a vehicle on which the mark is not fixed, and admits by way of proviso the defence formally contained in the final paragraph of s. 6 (2) of the Act of 1920; s. 19 (2) deals with the offence of driving when the mark is obscured or not easily distinguishable, and a proviso re-enacts the defence in the old proviso. So far, so good.

What is more difficult to follow is how the consolidating Bill came to make the definition of " public road " (in s. 27 of the Act of 1949) applicable to the whole of what used to be s. 6 of the Roads Act, 1920. That definition began life as s. 18 (3) of the Finance Act, 1924, which said: " No duty shall be payable under s. 13 of the Finance Act, 1920 (we called attention earlier to the cross-reference between that section and s. 6 of the Roads Act, 1920) as amended by any subsequent enactment, in respect of a mechanically propelled vehicle which is used exclusively on roads which are not repairable at the public expense." This enactment, relieving from excise duty (and consequentially from the obligation to have the marks fixed which became obligatory upon the taking out of the licence which gave rise to the excise duty) motor vehicles used exclusively on the named roads, did not relieve from excise duty a vehicle not used exclusively on the roads last mentioned, and therefore did not relate to the motor car we have been considering, which normally runs about on highways, most of them repairable by the inhabitants at large, but some of them (although they are public highways and may be thoroughfares) still at the stage of being " private streets."

It looks as if the Vehicles (Excise) Act, 1949, took the saving in s. 18 (3) of the Finance Act, 1924, and applied it (in its new form of a definition of the expression " public road ") to a case not previously covered by it, *viz.*, a motor vehicle which is not exclusively used on the sort of road named in the Act of 1924, but is being driven upon such a road for the time being, even though the road be in no sense " private," *i.e.*, even though the road is a public highway, provided such highway is not repairable by the inhabitants at large, and equally (or perhaps *a fortiori*) to a vehicle standing upon such last mentioned highway. We make this last point for the sake of linking what we have been saying to the remark we made earlier—that s. 6 of the Roads Act, 1920, by imposing a penalty upon " the person driving the vehicle " may have altogether omitted to require that a standing

vehicle anywhere should carry the marks with which the section is concerned. In other contexts, there has been argument upon the question whether a person is a driver. Some day such a question may be argued upon s. 19 of the Act of 1949. Here we are not arguing it, but are considering solely the definition of " public road " in s. 27 of that Act.

The result is strange. From some points of view, it may not matter that a car without its identifying plates stands in a private street (using the adjective in the same sense in which it occurs in the short title, and in parenthesis in s. 6 of the Private Street Works Act, 1892), or even that it can lawfully be driven in that street without the plates—since it cannot be driven out into a highway repairable. (Though we think the average constable, and average member of the public, might be surprised to find it being driven in such a street, which may be a through route, carrying appreciable traffic.) From another point of view, the gap in the law created by the Act of 1949 seems unfortunate: we mean, in relation to parking on the highway. We spoke in P.P. 3 at 119 J.P.N. 632, of private remedies for this, which is or may be a trespass, actionable by the owner of the soil beneath the highway, and the value of the remedy is reduced if the offending vehicle cannot be identified.

NATURE OF CRIMINOLOGY

By THE REV. W. J. BOLT, B.A., LL.M.

There is no copyright in scientific language; and the general public, including a section of the legal profession and possibly the magistracy, go through life with a grievous misconception of criminology because general usage gives the term two entirely different denotations.

Certain writers of detective fiction, whose works have a wide circulation, describe their respective sleuths as " criminologists," and the notion has gained wide currency that criminology is the investigation of criminal activities with the aid of more scientific devices, and perhaps logic, than our police forces employ. I must observe in passing that I believe this to be an unjust aspersion upon the efficiency and alertness of our police; within my observation, this country has no grounds for complaint in the standards of diligence and experimentation achieved by this great service.

Popular novelists are not entirely to blame in fostering this conception. Several distinguished European savants who were Professors of Criminology, won public distinction by their contributions to scientific crime-detection. Bertillon, famous for historic work on identification by finger-prints, and the physicists who developed x-ray photography to test the authenticity of handwriting and paintings, were universally acclaimed as criminologists; but this is not the sort of activity that is being so widely studied today, or which drew over 400 enthusiasts from 44 nations to London recently.

So far as we can trace, the word " criminology " was first used in 1886 by Garafolo, a disciple of the great Lombroso. The pioneers of the first generation, when they embarked on the new line of inquiry, were unduly exuberant, and freely described themselves as seeking " the causes " of crime. They certainly were not the first thinkers who turned their minds to the subject. The first 20 volumes of the " J.P." are an amazing disclosure of the widespread speculation among the rank and file of the magistrates on the social disease we call crime. Today, only a few specialists speculate (except during the 24 hours following the publication of the annual Home Office statistics). Around the middle of last century, the problem occupied a prominence in the national consciousness which today manifests itself only sporadically.

This does not mean that the magistrates exhibited much interest in the topics which constitute the modern science; but that the " causes of crime " were continually the theme of the public utterances of many sections of the community—Cabinet ministers, judges, magistrates, bishops, and the medical profession. The general tenor of their theorizing seems to us crude and amateurish. They had a closed list of " causes " which they stressed in varying proportions—bad housing, poverty, drink, unemployment, gambling, illiteracy, and ignorance. They did not share the diffidence of the modern criminologist about venturing to any conclusion until he has made a wide survey of all possible data.

The credit for pioneering this scientific approach to the problem of crime is usually given to a Belgian, Adolf Quetelet, who published his earliest studies of criminal statistics in 1830. The continent produced a succession of speculators throughout the century; but the towering figure who first made the whole civilized world aware that a new branch of learning had come into existence was the distinguished Italian Lombroso, whose activities roughly covered the last quarter of last century. He had not access to the width of information and depth of method that later generations made available; and many of his major conclusions have been ruthlessly relegated to the scrap-heap. From his somewhat superficial observations of prison populations, he gave the world his famous concept of a " criminal type " who could be recognized by specific physical characteristics.

Much labour has been expended by later criminologists in refuting his doctrines. The most convincing rejoinder came from an English prison officer, Dr. Henry Goring, whose masterpiece, " The English Convict " was published in 1911; and on the continent, a powerful anti-Lombrosian movement (we call it the " French " or " Sociological school ") sprang up in reaction. They stressed the influence of environment as against the Lombrosian emphasis on heredity.

But Lombroso, although so many of his specific tenets have been torn to shreds, did not labour in vain. He showed the world the true approach to the problem of crime—the study of the offender. Imitation is the sincerest form of flattery; and the Englishman, Goring, who attained world-wide distinction by annihilating Lombroso's doctrines, achieved his results only by the methods in whose use Lombroso had been the pioneer. We cannot, in fairness, begrudge Lombroso the title of " Father of modern criminology."

This need not import that earlier ages were not interested in the problem of crime. Greek philosophers saw it as a minor facet of that profound issue on which they perennially cogitated, the existence of free-will. They frequently debated the question whether, if man cannot help what he does, it is rational to punish him. The Romans had a very rigid criminal code, but, so far as we know, speculated little about its wisdom or rightness. That was the historic attitude of secular authorities down to modern times. We call it the theory of Retribution. X has committed the proscribed offence, and must suffer the prescribed penalty.

The single exception in history was the attitude of mediaeval canon law, whose avowed object was to induce penitence in the offender.

Until the birth of criminology in the nineteenth century, the theory behind the enforcement of criminal law had become fossilized; but the new ferment raised new queries—why there should be this mass of rebels against law and order, what impulses motivated them, and what preventive measures the community could adopt.

The reflexions of several generations have sobered criminological exuberance. The first generation wrote gaily of seeking the "causes" of crime, but that term was slowly and subtly supplanted by another which is now more prominent in its vocabulary—the "contributory factors," and the textbooks of today incline to a much wider definition of the purview. A recent work defines criminology as "the study of crime as a social phenomenon."

We must never forget that the contents of the criminal law vary from one legal system to another. American criminologists are more mindful of this fact than we are. Each of the 49 States has its individual criminal code; and what may be a criminal offence in one territory, may be perfectly lawful 10 *yds.* away. And the complexities of the British Commonwealth create stranger anomalies which the criminologist must bear in mind before he indulges vague generalizations about crime. In India, Pakistan, and Africa, a Muslim may contract four simultaneous marriages under his personal law, with impunity, whereas the Englishman living in the flat above the Muslim, dare not, if his lawful spouse is alive, contract a second civil marriage without committing a criminal offence.

This seems to suggest that since the definition of criminal offences varies from system to system, there must be a peculiar and isolated criminology based on the study of each. This proves to be a false conclusion. Each system will have its peculiar problems. In the United States, for instance, criminologists must pay attention to factors of race and colour and immigration that do not arise in our own country; but in practice, their conclusions and data prove to have great value for us.

Criminology finds itself constrained to look at other forms of conduct than those to which the State has attached a criminal penalty. The State may have reasons for not proscribing the act itself, but for treating as a criminal offence acts which are usually concomitant. So, in this country, prostitution is not a criminal offence, but soliciting is; drunkenness is not a crime unless attended by certain symptoms which threaten public peace and order; most forms of betting and gambling are not criminal, but certain subsidiary operations may be. Criminology must, therefore, take account of a wider range of anti-social conduct than the actual offences listed in a justices' manual.

What is the social value of such learning? By analogy, we may recall the millions of pounds spent throughout the world on research into the causes of a physical disease like cancer. The vast army of specialists and researchers engaged in that campaign have never yet given the world what it has eagerly awaited, anything in the nature of a cause or a cure; but who dare say that all that labour has been wasted? All practitioners would deride the suggestion, and would assert that treatment has been revolutionized, and human suffering abundantly minimized. The pre-supposition of all research is that unless you seek, you cannot hope to find; and, compared with the resources of medical research over the last half-century, public encouragement of the projects of criminology has been exceedingly feeble and meagre.

Has criminology anything like a practical programme to offer the community? I hope not. It is not a reformist movement seeking this change or that; its function is to accumulate information for the use of practical people like legislators and lawyers. Criminology is a science, accumulating, sifting, sorting, and evaluating facts. Its devotees may reach common conclusions (and each is entitled to his individual opinions), but you dare not interrogate it for a policy, as if it were a political party or a reformist league. The researchers who have been investigating the correlation of cigarette-smoking with lung-cancer may have formed their private conclusions; but they made it clear that their primary duty to the world was to submit their factual findings. They gave statistics, but suggested no line of legislation.

Readers who do not understand the aims and objects of criminology will be wise to keep that analogy in mind. The value of the criminologist's opinion on, say, the effect of the cinema on juvenile delinquency, may be of more value than anybody else's because he has given much more attention to the component factors of the problem; but his opinions are not so important as his findings.

The legal profession gives more consideration today than ever before to the metaphysics of law—its object and aim. The traditional attitude, "The Law is the Law" and that subjects must not dare to ask questions or cast reflexions, went out of office last century. The advent of criminology was foreshadowed in the transition from Blackstone to Bentham. In so many minds the misgiving revolved: Was the criminal law rendering the community all that was expected of it? and the deeper query arose, what exactly could the community expect of it? A sacred value of our civilization is that law must be man's servant, not his master. Is it as good a servant as it might be? If not, how may it best be amended?

This pronounced trend within the legal profession itself, ran parallel to the emergence of criminology. Criminology is the creation of teachers of law, but its early votaries soon recognized that they could not amass all the information they needed for the foundations of a new science, without the assistance of other experts. To use their own word (which has befogged and bedevilled many lawyers), the approach to crime must be "multi-disciplinarian."

One instance of the impact of criminology on law is seen in the tendency to admit to the procedure of a criminal trial a variety of testimony which has no close connexion with the offence charged.

It may be opportune to say a word on the relation between criminology and that subject which is deemed one of its branches, penology. The former contemplates the nature of anti-social conduct and the factors which contribute to it, and penology studies penal methods and their effects. There is an intimate inter-relation between the two. The history of the whole development has not yet been exhaustively examined. The "J.P." suggests that penology is the parent of criminology in England. Our authorities (and until 1877, let it never be forgotten, the magistrates were our prison authorities), were speculating on the merits and demerits of our penal system long before anybody attempted any profound inquiry into the deeper question why a penal system is needed at all.

There is little record that anyone ever called into question the wisdom or sanity of our penal methods until John Howard published his immortal report in 1777. The ripples from that sublime pebble spread wider and wider; and, although the term had not yet been coined, penology was a burning issue throughout the official classes of England in the middle of the

nineteenth century. I cannot find that elections were fought on it, or that it was ever a partisan issue; but I have been astounded at the abundance of interest revealed in the early volumes of the "J.P." The tumultuous revolution in public opinion reached official level when the great Gladstone Committee of 1897 formulated a new idealism for our penal system, that every inmate must leave our prisons a better individual than when he went in. It may sound commonplace and prosy in 1955, but Hansard shows that to many contemporaries, the adoption of that report spelt suicide for our system of law and order.

Human nature does not vary greatly from age to age, and I mention the report of the Gladstone Committee for a particular reason. Comments I occasionally hear on the infiltration of criminological concepts into law might well be verbatim quotations from Parliamentary debates in the 1890's. Opponents of that report pleaded with deep emotion, and I think sincere conviction, that alien and dangerous elements were being imported into the historic fabric of our national ideology, that foundations which had stood firm for centuries were being undermined, and the precious moral values crystallized in our criminal system were being weakened and jettisoned. An undertone I caught at the recent annual meeting of the Magistrates' Association, fell like old and very familiar music on my ear.

I say this because I am not a reformer, and am not advocating any sort of change at all. I have had the privilege of learning from the "J.P." that, whatever degree of opposition or apathy awaits the advance of criminology, one identical pattern persists in the evolution of the human sciences—an intense pathological fear provoked by a new idea.

I cannot believe that any exponent of criminology is infallible, I am certain that many of them occasionally talk hot air; but I am equally certain that the contribution they are jointly making to our communal use of criminal law will advance human welfare and happiness.

PRIVATE TERMINUS

We spoke at 119 J.P.N. 442, of the unreported decision in *Willoughby* v. *Chapman*, which dealt with the position of a tank receiving sewage. In that case there was a pipe carrying effluent from the tank to a water course, and the conclusion reached was that the pipes above and below the tank were sewers vested in the local authority. We have since had to consider a case where some of the facts were similar, but the tank had no effluent. This being so the question of its ownership and the responsibility of emptying it lay at the root of the whole matter. The tank and the main pipe leading into it had existed for many years—no doubt they began as similar arrangements began in many places, by private development of land, the tank and the premises drained into it being all in the same ownership. This last is probably a vital point, as will appear below. So long as that united ownership continued, neither practical nor legal difficulty need be found. In the case before us, the council had passed plans for houses connected to the pipe which led into the tank, and before the Public Health Act, 1936, came into operation such houses had been erected on several plots of land not owned by the person on whose land the tank existed. As the law stood before the end of 1936, it was clear that the main pipe leading to the tank had become a sewer vested in the council, and, therefore, it so remained after 1936—unless it could be established that the pipe had retained the nature of a drain and had not become a sewer. The only ground on which this might be contended would be that the pipe had no lawful outfall. In *Sutton* v. *Norwich Corporation* (1858) 22 J.P. 353, it was said that the word "sewer" came from the verb "to sew," *i.e.*, to drain, and the concluding passage of the judgment indicates that this means to carry the contents entirely away. This principle is behind the expression we have just used, that there must be a lawful outfall, because only then is the sewage really "sewed" or drained away. For example, discharge into sewage works is a lawful outfall, because the sewage goes there for disintegration and disposal. Equally, discharge into a stream (after treatment) is a lawful outfall. The matter is put thus by Buckley, J., in *Pakenham* v. *Ticehurst R.D.C.* (1903) 67 J.P. 448: "A sewer within the Act of Parliament I conceive must be in some form a line of flow by which sewage or water of some kind, such as would be conveyed through a sewer, would be taken from a point to a point and then discharged . . . It was decided in *Meader* v. *West Cowes Local Board* (1892) 67 L.T. 454, that if you have a thing which conveys sewage, but has no outflow at all, *but simply terminates on the land of the person who lays the pipe*, that is not a sewer." We have italicized these words because of their bearing on the case we have been discussing—each of the owners of the new houses put his sewage into a common pipe, which ended on the land of another person. The distinction is put rather differently in *A.-G.* v. *Peacock* (1926) 90 J.P. 49, where Eve, J., distinguishes "mere receptacles for sewage" from those which "carry it along to points where it was disposed of," the latter being sewers and the former not.

Obviously, the position put to us was an awkward one, with the council's sewer available for public use, discharging into a *terminus* in private ownership. The council would have liked to hold the landowner responsible for emptying the tank upon his property so as to prevent a nuisance. Difficult questions might arise not only on the law of public health but on the law of property: for example, whether the council had acquired an easement entitling them to discharge into the tank, with the consequence that the owner was obliged to empty it at his own expense. It looks as if there may be a gap in the vesting provisions of the Public Health Act, 1936—the tank seems to be the *terminus ad quem* of the pipe leading into it, which pipe is therefore a sewer, vested in the council. But the tank has no pipe conveying effluent from it to a further terminus, and therefore it cannot be regarded as part of a sewer and it cannot be called "sewage disposal works," because it is receiving sewage without disposing of it. Accordingly it will not have vested in the council, and the primary responsibility for its condition (regarded in isolation) rests with the owner of the field where it has been made, but it would be next to impossible on such facts to compel him to deal with it, since the bad condition of the tank arises from connexions made with the council's consent to the council's sewer which discharges into the tank: *A.-G.* v. *Peacock*, *supra*, is in point here. It seems impossible to doubt that the best results would be obtained if the council treated the tank as vested in themselves, and looked after it regularly, instead of waiting till the owner of the field made default, and then setting the law in motion. If the council did accept responsibility and control, it is hard to see who would be concerned to object.

IMPROVEMENT GRANTS AND DEFEASIBLE FEES

We have found some difference of opinion about a case which has been put before us ; fortunately it is not a case likely to occur often. There may, however, up and down the country be properties in need of improvement, for which *prima facie* an improvement grant would be justified, where there is a statutory right of reverter in certain contingencies. For example, the Schools Sites Act, 1841, provided that property either freehold or leasehold granted thereunder for purposes of a school, or a teacher's residence, or otherwise for education, should revert to the grantor, if its use for those purposes was discontinued. In one case mentioned to us, the property comprises a dwelling-house let by the present trustees, in whom the freehold is vested, to a school teacher employed by the local education authority, which now controls the school to which the house was attached. We assume this use to be within the terms of the conveyance to the original trustees, but it might happen, if that teacher no longer needed the house, that this would be let to some other tenant unconnected with any school. Actually, it is not now known who are the successors in title of the grantor, so that the risk of reverter may be negligible. The trustees have applied for an improvement grant under the Housing Act, 1949, and the question has been raised whether they can show the title required by s. 20 (3) (*c*) of that Act. The trustees are (it is true) owners of the house in fee simple; one view is that this is a fee simple absolute and satisfies paragraph (*c*), notwithstanding the theoretical possibility of reverter. The other view is that the risk, however remote in a particular case, does exist as a matter of law and in other cases might be a good deal greater: *cp. A.-G.* v. *Shadwell* (1910) 101 L.T. 630, where the property was still being used for purposes named in the Act, but not for those named by the grantor. One can conceive a case where property granted for a school teacher's house in accordance with the Act of 1841 was no longer needed for that purpose, and the intention of the trustees in seeking an improvement grant might be to adapt it for letting in the open market, so as to raise further income for their general educational purposes. In such a case the successors in title of the original grantor might see an opportunity of recovering possession of the property. Each case must be looked at on its own facts, as regards the danger to the local authority's funds, which may be slight. In principle, however, it is for the person applying for an improvement grant to get to the root of his title, and to arrange for his grantor's successors to release their contingent interest. In ordinary cases they would probably do this without asking for any consideration, if the applicant for the improvement grant would pay the charge for preparing a proper instrument of release. If this were done, the local authority would be made safe.

MISCELLANEOUS INFORMATION

WILTSHIRE FINANCES, 1954/55

Wiltshire county treasurer, Mr. R. M. Tough, A.S.A.A., has produced a concise and readable summary of the county council accounts for 1954/55. In future no separate detailed abstract of accounts will be printed, the figures being included in the annual budget; but as the budget is not published until February, this summary is published earlier (in October on this occasion) to give the first announcement of the outcome of the financial transactions of the year under review.

These transactions resulted in an increase of £165,000 in balances to a total of £759,000: a precept of 16*s.* was made but actual net expenditure fell short of estimates and required a levy of only 14*s.* 8*d.* Mr. Tough gives a summary of expenditure and income over the past three years, pointing out the effects of rising prices and expanding services: in the triennium gross expenditure has risen from £5·5 million to £6·1 million. Nevertheless these increases have been largely offset by increases in the general grant-in-aid so that the amount to be found by the county ratepayers has remained fairly stable. The exchequer equalization grant to Wiltshire has increased from £684,000 in 1952/53 to £846,000 in 1954/55, the increase being largely due to a government decision to raise the assumed national average rateable value per head of population.

In common with other authorities about half of Wiltshire expenditure represents staff costs, and once again treasurers and finance committees must budget for considerable increases in 1956/57. The police, administrative staffs and certain manual workers have already been granted increased pay, and other classes of employees are pressing their claims. In 1954/55 the county employed 2,100 teachers and even if these employees do have to pay an additional one *per cent.* for superannuation the effect of an increase in their pay of similar proportion to that granted to other classes would still be formidable.

Mr. Tough gives interesting statistics about county services. We note, for example, that sitting-case cars account for much the larger part of total mileage run by the ambulance service: this must be an economical method. In 1955 the number of whole-time domestic helps decreased from 22 to three but there was an increase of 59 to 352 in the number of part-timers employed. The statistics about fire occurrences, which do not show employment of firemen at high pressure, will doubtless be carefully studied in connexion with the review of duty systems now in progress.

Total of loans outstanding is £1,970,000 and total of money invested is £1,830,000. Looking at the Wiltshire figures, which are repeated in proportion in so many other authorities, we ask whether over the long term authorities would not be well advised to keep out of the gilt edged market and use their accumulated funds for their own capital purposes. The disastrous and continuing depreciation of trustee stocks is a sad commentary on the judgment of those who continue to insist that they are the only investments safe enough for local authorities.

LEGAL AID REGULATIONS

By the Legal Aid (Various Courts) Regulations, 1955 (S.I. No. 1904), provision is made for remuneration of barristers and solicitors giving legal aid in connexion with proceedings in various local courts, at the rate applicable for equivalent proceedings in the High Court or county courts.

FOOD AND DRUGS

An important circular (No. M.F. 14/55), dated December 28, 1955, has been issued to local authorities by the Ministry of Agriculture, Fisheries and Food, relating to the coming into force of the Food and Drugs Act, 1955. Information and advice are given on (i) the main changes in the law as they affect enforcing authorities, (ii) certain matters arising from the administration of the new Act and (iii) the division of administrative responsibility among the central departments in relation to the provisions of the Act.

CHANGES IN SLUM CLEARANCE COMPENSATION— SAFEGUARDING CLAIMANTS' INTERESTS BEFORE LEGISLATION

Mr. Duncan Sandys, Minister of Housing and Local Government, has asked housing authorites in England and Wales to ensure that nothing is done, before legislation is enacted, to prevent or prejudice claims by people who might otherwise be entitled to benefit from the improved rates of slum clearance compensation which he foreshadowed in the House of Commons on December 13, 1955.

In his statement in the House the Minister said that some action must be taken to mitigate the acute hardship which is inflicted in a limited number of slum clearance cases. He intended to introduce a Slum Clearance Compensation Bill to effect certain changes in the existing terms of compensation. In a circular dated December 15, 1955, the Minister directs housing authorities' attention to the period between his announcement and the day on which the Bill reaches the statute book.

The circular says, " Before any property likely to be affected by these proposals is demolished, steps should be taken to ensure that

all necessary particulars are recorded to enable compensation to be assessed on the new basis."

Those who will benefit under the forthcoming Bill are:

1. The owner-occupier who is today living in a slum house which he bought since the outbreak of war, and which is compulsorily purchased (or cleared or demolished).
2. The occupier (owner or tenant) of a small shop or business which forms part of a slum house.
3. The owner or tenant of a slum house which he has kept in good repair.

ARE MORE HOSPITAL BEDS NEEDED?

Dr. Somerville Hastings, F.R.C.S., M.P., in an article in a recent issue of the *Lancet* considered whether more hospital beds are really needed. He showed how the principle voluntary hospitals developed in response to an urgent national need and then the poor law infirmaries helped to meet the need. As he pointed out, however, housing conditions are improving and an increasing number of people live in houses in which it is possible to be ill in relative comfort provided medical and nursing services are co-operative. He mentioned increasing evidence that certain classes of people do much better at home under such conditions. This applies particularly to children and old people. In his view the psychological effect of removal to hospital is adverse to some children. Old people also move badly and in many cases do not survive more than a week or two. More hospital beds are needed for mentally defective children. Many hospital wards are hopelessly out of date, and lack essential facilities. He urged that what is needed is better hospitals. If more were provided he doubted whether they could be staffed. He asked whether half-way houses for old people in which hospital facilities can be brought to the patient as and when required were not a much greater need. In the vast majority of illnesses in old people the medical and nursing care can be given in such accommodation without removing the patient. He said it was easy to understand why doctors should ask for more hospitals, especially in the areas where they are practising. It is much easier to do good work if a patient is subject to the discipline of a hospital ward and under the skilled observation of a trained nurse. It is easy to appreciate why every town of any size that has no general hospital is now demanding one. To bring hospital facilities to the patient in his home usually implies an increase in the local rates since those facilities are provided by the local authority and not by the hospital service. Besides, it is much nicer to be ill in a hospital near one's home where one's friends can visit daily. More women are going out to work and had therefore too little time to attend to sickness at home. But the small hospital is often neither efficient nor economical to run. Dr. Hastings asked whether the best solution might be found in the provision of consultative stations for outpatients with specialist advice readily available to the local doctors for their patients, and in linking those stations with parent hospitals to which the consultant is attached. He concluded that better and more up-to-date hospitals are needed but he doubted whether more beds are needed.

NOISE

There was an interesting adjournment debate in the House of Commons on December 2, 1955, as to the detrimental effect of noise and vibration on the health, well-being and efficiency of the nation. It was suggested that more research and education are necessary. One member asked the Government to consider the possibility of putting a ban on the motor horn in London as has been done in Paris. Reference was also made to noise from aircraft, particularly at night, and from factories. In explaining the present legal position, the Joint Under Secretary for the Home Department (Sir Hugh Lucas-Tooth), said the Motor Vehicles (Construction and Use) Regulations, 1955, contain various provisions relating to such matters as silencers, mechanical defects, the sounding of motor horns and the running of engines. As to aircraft, he said, the Minister of Transport and Civil Aviation, in co-operation with the civil air authority, seeks to control the manner of flying. Restrictions have been placed upon flying at night. On the question of protecting people from noise inside buildings he said that for some years the Building Research Station of the department of Scientific and Industrial Research has been conducting work of great importance. The results of its work have been published and are available to builders and architects. Referring to the suffering caused to hospital patients by noise he said that the Minister of Health had pointed out the importance of keeping noise in hospitals to a minimum. Much had been done through implementation of the advice given in this matter by the Central Health Services Council.

He agreed that local authorities have under general law no power to take action against a noise nuisance. Noise is not one of the statutory nuisances defined by the Public Health Act, 1936, but some local Acts have extended the definition to include any excessive, unreasonable or unnecessary noise which is prejudicial to health or a nuisance. Under these Acts, 372 local authorities have power to deal with noise under the procedure of the Public Health Act. They can then serve an abatement notice upon a person responsible for making the noise requiring him to abate the nuisance; in default the matter can be brought before the magistrates.

SLUM CLEARANCE

The former parliamentary secretary to the Ministry of Housing and Local Government (Mr. W. F. Deedes) in the House of Commons on November 24, 1955, explained the views of the Government on the question of hardship which Brigadier Terence Clarke had suggested might sometimes arise in slum clearance schemes. Mr. Deedes pointed out that the basic principle was that it is the duty of local authorities to deal with houses in their areas which are unfit for human habitation. The second principle was that in the case of an individual house they must first attempt to secure its repairs at reasonable cost. Only after that has been fully considered can a demolition order be made and the owner has the right of appeal to the county court. The third point he stressed was that where there is a number of unfit houses the local authority must be satisfied, first, that the houses are unfit for human habitation and, secondly, that the most satisfactory method of dealing with the conditions in the area is the demolition of all the buildings in the area. Then the area may be designated as a clearance area. The local authority can then decide whether to acquire the area and develop it or proceed by a clearance order which requires the owners to undertake demolition. Where a compulsory purchase order is made the approval of the Minister is required before the local authority can proceed. As Mr. Deedes explained, the local authority have substantial powers to mitigate hardships. They have the obligation to re-house people displaced through their operations and they can adjust rent to take account of personal circumstances. They can pay removal expenses and where a business is being carried on in a house due for clearance the local authority may make a discretionary payment towards any loss sustained. Local authorities have been advised by the Ministry to remind the local public, through the press and otherwise, of the fact that they are preparing a comprehensive programme of slum clearance, to make other statements from time to time as they think fit and be ready to advise those preparing to buy older houses in the districts to make inquiries at council offices to find out whether they will be affected by any slum clearance programme.

ROYAL NATIONAL INSTITUTE FOR THE BLIND

The annual report of the Royal National Institute for the Blind shows that each year some 12,000 people are registered for the first time as blind persons. Many of these have passed their working days and make the best terms they can with their blindness with the help of home teachers. There are younger ones for whom life has suddenly become desperately restricted and without any future. For them, the Institute provides homes of recovery and centres for social rehabilitation. The newly blind persons feels more helpless, despondent, and socially embarrassed than any other person. As is pointed out in the report, his whole chance of a future lies in the hope of readjustment and re-deployment to some occupation that will restore in him self-respect, independence and earning capacity. It is for these persons that the Institute is able to do so much. Many people leave the homes of recovery better equipped and possessing more accomplishments than before they became blind. A course of rehabilitation lasts for two or three months.

It is emphasized that blindness is not an illness and need not become one, provided the person is told the worst soon enough and his health is not seriously impaired by overlong anxiety. After readjustment the next stage is training for employment and placement for the younger and able-bodied. Employment for them consists chiefly of physiotherapy, telephony and shorthand-typing, but a wide and extending range of industrial and commercial pursuits are also available. It is claimed that Great Britain stands in the forefront in the processes of industrial placement and has the highest percentage of its blind workers in open employment. The report is well illustrated to show blind persons working in various types of employment.

The services undertaken by the Institute extend in many directions. The Sunshine Homes for babies and young children are well known. Twice a term in London are held evening "parents' meetings" which are increasingly attended by parents, home teachers and welfare workers. Specialized homes are providing for the old and infirm. The talking-book library, now to be known as the Nuffield Book Library, has 4,500 blind members with a waiting list of 700 and an annual circulation of 1,300,000 records. Ten years ago, 4,700 Braille book volumes were transcribed by the Institute's students, while today this service has grown to 8,084 volumes, which are used by professional blind people earning their living as well as by students throughout the world. Two new Braille periodicals have been started, one a monthly companion to the *Radio Times*. The Institute is certainly doing a fine work in co-operation with its affiliated voluntary bodies and with the local authorities.

REVIEWS

Hill and Redman's Complete Law of Landlord and Tenant. Twelfth Edition. By W. J. Williams and M. M. Wells. London: Butterworth & Co. (Publishers) Ltd. 1955. Price £5 17s. 6d. net.

In reviewing earlier editions of this work, and others on the same subject, we have said that for the practitioner who had to buy his own books it must be a matter of choosing between one and another. His choice may be influenced by that of his teachers in the law, or the habits of the office in which he served his articles. In a local government office, or that of an institution where several persons on the staff have legal qualifications and have to be supplied with necessary books (not paid for by themselves) there is more scope, and on a subject like "landlord and tenant" two major works at any rate can perhaps be obtained. Our own experience of *Hill and Redman*, through several editions, leads us to suggest that the practitioner who cannot afford more books than one upon the subject may profitably consider whether he will not prefer this to its rivals, and the head of an office where different books can be obtained should certainly include it on the office shelves. There was just over four years between the eleventh edition and the twelfth, taking dates given in the prefaces. Short as that interval was, there had been a cumulative supplement of more than 300 pages, so it is not surprising that the publishers felt it necessary to produce a wholly new edition, to include the effect of the important statutes and the numerous decisions given on "landlord and tenant" up to the beginning of the Long Vacation in 1955. (Even so, it is right to warn users of the book that, while it was going through the press, there were still more decisions, notably perhaps *Wheeler* v. *Mercer* [1955] 3 All E.R. 555, upon the position of a tenant at will under the Landlord and Tenant Act, 1954. It is inevitable with a subject like landlord and tenant, which is constantly before the courts, that the best textbook may be unable to keep pace with the judges.)

In reviewing an earlier edition, we remarked that it seemed strange to bring so much of the subject under the general rubric "common law," seeing that so little common law is left after the inroads of Parliament upon it, and that in the portion of the book which then was so entitled the greater part of what was said sprang from statutes, and dealt with their interpretation. We said, however, that this was really no more than a verbal criticism which would not matter to the lawyer, once he realized what the learned editor had in mind, but we are glad to see that, in this new edition, the rubric used is "general law." This, it is true, is also an ambiguous phrase; local government lawyers, in particular, tend to use it in distinction from the voluminous enactments to be found in local Acts of Parliament. However, we think the new name is an improvement, even though a minor one. A more important change is that the Landlord and Tenant Act, 1927, so far as unrepealed, and the Landlord and Tenant Act, 1954, have been brought into the same part of the book. This part (now called "general law") covers 730 pages, roughly half the book, and the treatment throughout those pages is in narrative form: that is to say, the propositions of law are logically arranged in paragraphs, with numbers for convenience of reference, destined to become key numbers as supplements appear. Under each paragraph the statutory or judicial authority for every proposition is set out in footnotes.

In part II of the book dealing with agricultural tenancies the treatment changes. The relevant statutes are annotated section by section, with cross reference to other parts of the book and to statutes, as well as to the case law. This part covers 260 pages and is, in effect, a complete treatise upon agricultural tenancies, in so far as these present special features additional to the law of ordinary tenancies to be found in part I of the book. The same treatment, by way of annotated sections of the statutes, is continued in part III which deals with the Rent Restrictions Acts. Here again it has to be remembered that tenancies to which those Acts apply are fundamentally subject to the general law, even though some of its normal features are ousted or varied by the Acts. Here again, too, the 200 pages or so given to the Acts amount in effect to a treatise, which can be usefully consulted as such, despite the existence of other textbooks devoted to those Acts exclusively. One advantage of having so full a treatment of the Rent Acts in this volume is that the person referring to the Acts can so readily look also to the general law, which in textbooks dealing specifically with the Acts may be more or less taken for granted.

Part IV of the book is headed "emergency legislation," and ranges from the Landlord and Tenant (War Damage) Act, 1949, to the Requisitioned Houses and Housing Amendment Act, 1955. It is a little startling to discover that, even today, this legislation with necessary notes takes up nearly 60 pages of the book. This also is annotated section by section. Finally there is an appendix of statutes and regulations relevant to the general law. This is divided into two portions, the longer of which comprises the Landlord and Tenant Acts specifically so-called and the rules thereunder, and the remainder a group of other Acts from the Small Tenements Recovery Act, 1838, to the Rating and Valuation (Miscellaneous Provisions) Act, 1955. The statutes in the appendix are not annotated, apart from italic notes showing what has been repealed.

In addition to notes upon all the propositions of law in part I of the book, and upon the enactments in part II and onwards, the learned editors have included in their preface a valuable commentary upon the law of licences to occupy real property. In our Practical Points we constantly find ourselves faced with the question whether a person who is found on land is a lessee or a licensee and, if the latter, what is the effect of this status upon his rights and those of the licensor. The question is often difficult and, with particular reference to *Errington* v. *Errington* [1952] 1 All E.R. 149, the editors discuss it and indicate doubt whether the latest decisions have not gone too far, in ignoring what could be shown to be the intentions of the parties. A book review is not the place to discuss abstruse points of interpretation, but our experience proves how necessary it is, in this as in other cases, to bear in mind that a person who occupies another's property by that other's leave must be there in pursuance of a contract of some sort, be it no more than a bare licence, and that the fundamental rule for interpretation of contracts is to discover (if possible) what was intended by the parties. The learned editors, at any rate, think that in some recent decisions the courts have been too much inclined to attach value to technicalities, as against finding out what the parties using technical language may have meant. Their discussion of this is instructive, and may serve as a warning to the advisers of local authorities and other lawyers, who are not infrequently called upon to safeguard the interests of a landlord, particularly since the Landlord and Tenant Act, 1954. It may be true, as the editors suggest, that the learning upon licences has now become so voluminous that there is room for a separate textbook, but meanwhile it is convenient to find it treated, as is still done in *Hill and Redman*, in close connexion with the law which relates to leases in the proper sense.

The subject of landlord and tenant is constantly developing, from political causes and also by reason of the complexities of modern life, which mean that hardly an issue of the law reports fails to produce some fine distinction. It is therefore important that every lawyer, whether in salaried practice or in private practice, shall be provided with the most up-to-date textbook available for the time being.

The Essentials of Forensic Medicine. By Cyril John Polson, M.D. (Birm.), F.R.C.P.(Lond.), Barrister-at-Law, Professor of Forensic Medicine, University of Leeds. English University Press, Ltd., 102 Newgate Street, London, E.C. Price 30s.

The author tells us that this book is an amplification of lectures he delivered in the University of Leeds, and it is easy to see that they must have been enjoyable as well as instructive. Although he has had undergraduates studying medicine or law in mind he is well justified in hoping that his work will be found useful by practising members of both professions as well as by coroners, magistrates and police. It is not necessary to be already versed in the subject to understand this clear and comprehensive exposition of a difficult but interesting subject.

Crime and criminal law figure largely, which is natural enough because the doctor is often concerned with patients who have been the victims of offences, and sometimes with investigations into suspected homicide or suicide. Sexual offences also involve some difficult medico-legal questions. In civil cases he may have to consider the question of the possible period of gestation, and in both civil and criminal cases he may be involved in problems of mental condition.

In all this, the doctor needs to bear in mind the possibility of being called upon to give evidence. Thus, while admitting that the clinician is preoccupied in treating and healing a wound, the author insists that he must not overlook features that may be of medico-legal importance. If it appears likely that legal proceedings especially criminal, may follow, an adequate record should be made at once. Professor Polson shows the way to prepare and to give evidence, and a useful chapter gives a description of the courts and their procedure. How far a doctor is justified in making a physical examination and whose consent may be necessary are sometimes troublesome questions, but the answers are supplied here.

In dealing with the subject of identity Professor Polson expresses an opinion which may not be popular but which is, we believe, sound. "It is easy to understand why in certain quarters there is a desire to record the finger-prints of the whole nation: this would have distinct advantages, which, on balance, would be appreciably greater than the alleged disadvantages or possible dangers."

PERSONALIA

HONOUR

Major Reginald Bullin, O.B.E.

By some mischance, we omitted from our list of New Year Honours the name of Major Reginald Bullin, O.B.E., T.D., O.T.S., J.P., who received the Honour of Knighthood. Major Bullin is an ex-chairman of the Portsmouth magistrates, chairman of the Portsmouth Local Employment Committee and Disablement Advisory Committee, and vice-president of the Magistrates' Association.

APPOINTMENTS

Mr. Reginald Douglas Woods Maxwell, deputy town clerk of Aylesbury, Bucks., will be succeeding Mr. Harold Crookes as town clerk on July 14, next, *see* our issue of January 14, last. Mr. Maxwell came to Aylesbury in March, 1955, after 3½ years as senior solicitor with Watford, Herts., corporation. Prior to that he was assistant solicitor and deputy clerk to St. Albans, Herts., city council and Rickmansworth, Herts., urban district council, respectively. He was articled to Mr. Charles F. S. Chapple, the town clerk of Holborn, on his return from war service in 1946, and was admitted in 1950. Mr. Crookes received the Freedom of the Borough of Aylesbury in May, 1954.

Mr. James Francis Beresford Stevens has been appointed deputy coroner for Mid-Buckinghamshire. Mr. Stevens succeeds Colonel H. M. Edwards who is now coroner. Colonel Edwards has been a practising solicitor for 33 years, and became senior partner in the firm of Messrs. Wilkins & Son, of Aylesbury, on the retirement of Mr. S. E. Wilkins on December 31. Colonel Edwards has also succeeded Mr. Wilkins in his position of coroner, *see* our issue of August 13, 1955 and January 14, last.

OBITUARY

Mr. W. Archibald Boyes has died at the age of 80. Mr. Boyes was clerk to the justices for the Barnet division of Hertfordshire and the South Mimms division of Middlesex from 1917 to 1952, and served for some years on the council of the Justices' Clerks' Society. He was admitted in 1898. His father, Mr. W. Osborn Boyes, LL.D., was clerk to the same benches from 1881 to 1917, and Mr. Walter Wright now occupies the same position. Mr. Wright is the partner of Mr. W. Edward Boyes, son of Mr. A Boyes, in the firm of Messrs. Boyes & Wright, of Barnet.

NOTICES

The first court of quarter sessions for 1956 for the city of Winchester will be held on Thursday, February 2, 1956 at 10.45 *a.m.* at the Guildhall, Winchester.

BOOKS AND PAPERS RECEIVED

Report on Colouring Matters. By the Food Standards Committee (Ministry of Agriculture, Fisheries and Food). H.M. Stationery Office. Price 9*d.* net.

Return of Police Force Statistics, 1954–55, and Return of Fire Services Statistics, 1954–55. Institute of Municipal Treasurers and Accountants (Incorporated) and Society of County Treasurers. Price 3*s.* each, post free.

The Electronic Office. By R. H. Williams. London: Gee & Co. (Publishers) Ltd. Price 15*s.* net.

GLEANINGS FROM THE PRESS

Herts Advertiser. January 13, 1956.

ACCUSED OF STEALING VAN

Charged at St. Albans divisional sessions, on Saturday, with stealing a motor van worth £75 belonging to Terence Cannon, a builder of "Leonora," Station Road, Smallford, at St. Stephen's on December 22, Alexander Swales (35), a labourer, of no fixed address, was committed for trial at Hertfordshire quarter sessions. Other charges of taking and driving away the vehicle without the consent of the owner, of driving while uninsured and of driving while disqualified, were adjourned indefinitely.

In this case the defendant was committed for trial for stealing a motor van. Three other charges arising out of the same incident were adjourned *sine die.*

The charge of driving while uninsured is purely summary and could not have been committed for trial in any event. A charge of driving while disqualified remains a summary matter unless the defendant claims to be tried by a jury, as provided by s. 25 of the Magistrates' Courts Act, 1952.

The charge of taking and driving away, however, is an offence that is, by virtue of s. 28 of the Road Traffic Act, 1930, both an indictable offence and a summary offence and comes within s. 18 of the Magistrates' Courts Act, 1952, and there might have been a committal on that charge as well as on the charge of stealing. Presumably the depositions would contain evidence of both offences.

If the justices had proceeded summarily with the charge of taking and driving away under s. 18 (3) of the Magistrates' Courts Act, 1952, after they had begun to inquire into it as examining justices, they would be precluded from sending it for trial by s. 24. With that exception there would be nothing to prevent them sending it for trial. If they had started it summarily under s. 18 (1) they could have committed it for trial later under s. 18 (5).

It may be that the justices had in mind s. 28 (2) of the Road Traffic Act, 1930, which provides that on an indictment for stealing a motor vehicle the defendant may be found not guilty of stealing, but guilty of taking and driving away and dealt with accordingly.

The Star. January 18, 1956.

—BUT MISS 17 MUST WAIT

When Miss Olive Marjorie Cratchley (17), of Camilla Road, Bermondsey, applied at Bromley today for permission to marry James Brian Colley, also of Camilla Road, her father, Mr. Otto Cratchley, of Ravensworth Road, Mottingham, objected because Colley was on National Service and liable to be sent overseas.

The hearing was adjourned for six months, the chairman, Mr. E. V. Mills, remarking that both parties were very young, and the young man was bound to be away from home a good deal on account of his duties. If they were still of the same mind they could come back again after six months.

In this case the applicant had to travel from Bermondsey to Bromley, Kent, because her father, who was refusing his consent, lived within the jurisdiction of that court.

There is no such choice of venue in consent to marry cases as there is in other "domestic proceedings."

In cases under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895-1949, application may be made to any court of summary jurisdiction for any place in which the cause of complaint shall have wholly or partially arisen or in which the married woman or her husband ordinarily resides [s. 4, Summary Jurisdiction (Married Women) Act, 1895, as amended by s. 6, Married Women (Maintenance) Act, 1949.]

In Guardianship of Infants Acts cases, if application is made to a court of summary jurisdiction, it may be made to a court having jurisdiction in the place in which the respondent or any of the respondents or the applicant or the infant to whom the application relates resides (s. 1, Guardianship and Maintenance of Infants Act, 1951).

Application for consent to marry may be made to "the High Court, the county court of the district in which any respondent resides, or a court of summary jurisdiction" (s. 3 (5), Marriage Act, 1949).

In *R.* v. *Sandbach JJ., ex parte Smith* [1950] 2 All E.R. 781; 114 J.P. 514, it was held, on the construction of similar terms in s. 9 of the Guardianship of Infants Act, 1886, as enlarged by s. 7 (1) of the Guardianship of Infants Act, 1925, that the court of summary jurisdiction having jurisdiction must be that of the place where the respondent resides.

The decision in *R.* v. *Sandbach JJ.* remains effective so far as consent to marry cases are concerned, although it has been superseded in guardianship cases by s. 1 of the Guardianship and Maintenance of Infants Act, 1951.

An article on the question of jurisdiction in consent to marry cases will be found at 117 J.P.N. 819.

News Chronicle. January 3, 1956.

SO GOOD NEIGHBOUR REG. MAKES IT LEGAL

At 8.30 sharp this morning 45 year old Reg. Broad will pick up four friends in his car and run them eight miles to work. At 5.30 he'll run them home again.

But for the first time in five years he will not be risking a breach of the law.

Day after day Mr. Broad has been running them in his 10 h.p. Morris from the "forgotten" village of Ilmington to Stratford-on-Avon where they work.

Always the same four friends. And always they have taken it in turns to buy him a gallon of petrol.

Then someone in the village told the police that Mr. Broad was running an unofficial taxi service.

So he plunged £30 *in legal fees and, " out of a spirit of good neighbourliness," applied yesterday to the West Midland licensing commissioners for a special road service licence.*

Granting it, Mr. W. P. James, regional commissioner, said: " We wish him good luck with this service."

Now Mr. Broad's private car will be able—officially—to pick up the four passengers. Instead of sharing the cost of petrol passengers will each have to pay 7*s.* 6*d. a week.*

Under the licence the car must do the same route six days a week. If Mr. Broad can't drive it one of his passengers will take over.

Many people will be surprised to learn that a private motor car can be an express carriage, but that is what Mr. Broad's car is when he is taking his passengers to Stratford-upon-Avon and back. He is carrying passengers for hire or reward at separate fares of 7*s.* 6*d.* a week each and his car is therefore an " express carriage " as defined by s. 61 (1) (*b*) of the Road Traffic Act, 1930, as amended by s. 24 of the Road Traffic Act, 1934.

In *East Midland Area Traffic Commissioners* v. *Tyler* [1938] 3 All E.R. 39, it was held that a man who used his car to take three friends to work each morning and home again in the evening, each of them paying 5*s.* a week, was using it as an express carriage and that it required a licence as such.

BICENTENARY

JANUARY 27, 1756

The Eighteenth Century has been called, not without justification, the Age of Reason. For the legal practitioner it is associated with a multiplicity of legislation, a great development of the Common Law (particularly under Mansfield, C.J., on the commercial side), and a vast increase in the importance of the Equity Jurisdiction, especially during Hardwicke's Chancellorship. The latter, whose 19 years as Lord Chancellor ended in 1756, Lord Campbell pronounced to be

> " the most consummate Judge who ever sat in the Court of Chancery, being distinguished not only for his rapid and satisfactory decisions, but for the profound and enlightened principles which he laid down, and for perfecting English Equity into a systematic science."

In that same year of 1756 Mansfield became Chief Justice of the King's Bench, an office which he held for 32 years. He is remembered chiefly for his success in developing the mercantile law from " a chaos of unselected decisions " into a coherent body of rules; the principles of *quasi*-contract and the doctrine of " unjust enrichment " are among the fruits of his genius. It was at about the same time that William Blackstone began his lectures on English Law; publication of the famous *Commentaries* started in 1765. Altogether it was a rich and elegant period, when great jurists and judges flourished as never before or since—a most significant era in the history of our legal system.

Step by step with these developments goes the progress of English literature. In verse the giants are Alexander Pope and Thomas Gray—the most " classical " of all our poets. But it was pre-eminently an age of great prose—Addison, Berkeley, Gibbon and Hume, Butler and Bentham, Sheridan and Goldsmith, Horace Walpole and, above all, Samuel Johnson, conferred upon English letters a lustre that was reflected all over Europe. The classical virtues of dignity, symmetry, reason and restraint were preached and practised, and with them a humanity of outlook that we have never since been able to recapture.

It was essentially a cosmopolitan age. Men of letters in France and England enjoyed cultural contacts unaffected by the political controversies of the time. The French Encyclopaedists —Diderot, d'Alembert, Montesquieu and Voltaire—profoundly influenced the thinkers of the day, helped to defeat obscurantism and laid the foundations of modern science.

So it was with all the arts. The Eighteenth Century is the Golden Age of music; the same characteristics—fastidious selectivity, elegant refinement, aesthetic restraint—pervade the works of contemporary composers. J. S. Bach has a quality of sublime serenity; Handel of resonant splendour; Haydn of genial humour—these are uppermost; but the main classical background is there. And towards the close of the period, epitomizing and summing up all the finest qualities of the age, stands Wolfgang Amadeus Mozart, born on January 27, 1756.

It is fitting that we lawyers should today join with all music-lovers in paying homage to that gentle spirit who, secure in his immortality, presides over the sublimest of the arts. His birthplace was the delightful town of Salzburg, nestling in a little valley among the mountains of the Austrian Tyrol—a gracious setting for a gracious personage—a musician without compeer. A wonderchild, a composer from five years of age, he attained artistic maturity in his early twenties, and died in poverty at 35, his frail body consumed by the febrile, compelling genius within. In that short span of years he left to posterity nearly 650 compositions, the least of which would have done credit to more than one contemporary musician: the greatest of his works —and they are very many—scale the heights, penetrate the clouds, and reveal glimpses of a more than earthly beauty. The enchantment that Shakespeare can perform with words—the magic that Rembrandt can work with paint upon a canvas—such are the spells that Mozart can weave in sound. Nothing superfluous is included—yet all the essentials are there—loveliness of melody, transcendent harmony, formal perfection, outward simplicity concealing consummate art. No composer has achieved such an infinite variety; none has so richly rung the changes upon the different instruments and voices; none has exhibited so marvellous a diversity of emotions and moods. The 41 symphonies run the gamut from childlike ease to profound complexity; it is typical of Mozart's genius that the three last and greatest of them were polished off in six short weeks in the summer of 1788. The operatic works include the charming *Bastien and Bastienne* (written at the age of 12), the superbly tragic *Idomeneo*, the light and entertaining *Seraglio;* the wit and humanity of *Figaro;* the blend of urbane cynicism and supernatural horror in *Don Giovanni;* the elegant *rococo* of *Così fan tutte*, and the unearthly, ethereal beauty and pathos of *The Magic Flute*. There are concertos for practically every instrument of the orchestra, including a couple of dozen for pianoforte, eight for violin, and others for flute, harp, viola, oboe, clarinet and bassoon. There are numberless concert arias and cantatas, many vocal religious works, a vast amount of chamber music, sonatas for solo instruments and duets. And every so often, by a deft touch of instrumental colour or tonal quality, seemingly without effort, Mozart opens for us those

> " Charm'd magic casements, opening on the foam
> Of perilous seas, in faery lands forlorn."

On this, the bicentenary of his birth, we cannot do better, in closing this brief tribute, than to quote the appraisement of Charles Gounod:

> " Eternal truth, perfect beauty, inexhaustible charm; profound, yet ever limpid; all humanity, with the simplicity of a child."

A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Children Act, 1948—*Parent killed by negligence—Loss of parent's contributions—Remedy of local authority.*

A child aged eight is in the care of a local authority pursuant to s. 1 of this Act. His mother died some years ago and his father has been paying £1 per week towards his maintenance by virtue of a court order. The father has been killed through the negligence of a lorry driver. The local authority thus loses the possibility of recovering £52 *per annum* for as long as the child is under 16 years of age and remains in care. Is it considered that the local authority has a cause of action against the negligent lorry driver?

The personal representatives of the deceased father will have a cause of action against the driver for the benefit of the deceased's estate under the Law Reform (Miscellaneous Provisions) Act, 1934, or the Fatal Accidents Acts, but s. 24 of the Children Act, 1948, provides that only the father and mother of a child in care shall be liable to make contributions.

A. SERES.

Answer.

We do not on the facts before us see how the local authority can sue the driver or his employers—they do not fall within the limited classes specified in the Acts you mention.

2.—Children and Young Persons—*Beyond control—"Fit person"—Right to bring young person before court.*

At a court in the north of England, A, a young person, was committed to the care of B, a certain organization that cares for orphaned etc., children, as a fit person. A proved to be a difficult child and was moved from one establishment to another and finally came to a part of the organization in this area. B have now brought A before this court as being beyond control.

Do you agree:

(*a*) That B by reason of s. 75 (4) of the Children and Young Persons Act, 1933, can be considered a parent for the purposes of s. 64 of that Act?

(*b*) That as B is not a local authority they have no right to apply to a juvenile court for an approved school order in accordance with s. 84 (8) of that Act?

(*c*) That as r. 15 of the Summary Jurisdiction (Children and Young Persons) Rules, 1933, is made inapplicable in this case by r. 23 of those rules the parents are not entitled to receive notice of the proceedings?

(*d*) That the most satisfactory course would have been for B to apply to the court that made the fit person order for the order to be varied. In which case the parents, who live in the locality of that court, would have an opportunity of being heard?

S.C.J.B.

Answer.

(*a*) Yes, the fit person is also within the definition of guardian in s. 107.

(*b*) We agree.

(*c*) We agree, but *see* (*d*).

(*d*) That may be so, but we are of opinion that wherever the case is heard it is desirable that the parents should be afforded an opportunity of being heard and making representations.

We have answered these questions on the assumption that a body, as distinct from an individual, not being the local authority, may be a fit person. The point is open to doubt, *see* notes at 107 J.P.N. 133 and 229.

3.—Magistrates—*Jurisdiction and powers—Recognizance—Surety—Release from obligation.*

On July 20, 1955, a maintenance order containing a non-cohabitation clause was made by my justices, on the ground of persistent cruelty, against B on the complaint of his wife.

On September 7, 1955, B's wife applied to my court for an order requiring B to find sufficient sureties to keep the peace and be of good behaviour towards her. The court found that B had, on August 19, 1955, as was alleged in his wife's complaint, used divers threats towards her, and they made the order asked for. In pursuance of that order, B and two sureties entered into the appropriate recognizance.

One of the sureties, C, has consulted me about his position, informing me that he understands that B and his wife are now living together again (for the first time since the making of the maintenance order). C says, quite justifiably in my view, that he can hardly be expected to guarantee B's wife from attacks by B while they are living together as man and wife. B was in the past addicted to violence towards his wife, and C fears that B will commit acts which are a breach of the conditions of the recognizance. This fear is based not upon any evidence of recent use of threats or violence by B, but upon C's belief that B is still possessed of his old propensity.

I think you will agree that if B does break the conditions of the recognizance, the justices in their discretion may refrain from ordering the forfeiture of C's recognizance, but C would rather be released completely from his obligation.

I cannot find any provision enabling the justices to discharge C from the recognizance, except that contained in s. 92 of the Magistrates' Courts Act, 1952, and this, I feel, cannot be invoked because C is unable to prove that B "has been, or is about to be guilty of conduct constituting a breach of the conditions of the recognizance." I have considered whether the recognizance could be discharged on the complaint of either B or his wife, and, here again, I see no provision enabling this to be done.

SALFREY.

Answer.

We know of no power to release the surety unless he can satisfy the conditions of s. 92, *supra*. As suggested, in the event of his recognizance being forfeited, the justices could mitigate the amount or remit it under s. 96 (3).

4.—Names of Streets—*Renewal of inscriptions—Names not given by council.*

By an order made by the Minister of Health in 1940, the provisions of the Public Health Act, 1925, relating to the naming of streets, were applied to certain parishes in this rural district. In one such parish it is necessary to renew inscriptions of the names of streets. Such names were not given to the streets under s. 18 of the Act, but are names which have been in existence for many years, and there is no record showing how or by whom the names were given to the streets. Your advice is sought on the point whether this council is authorized to renew such inscriptions under s. 19 (1) of the Act, or whether such authority applies only in respect of names given to streets under s. 18 of the Act.

Answer.

Section 18 recognizes that streets can have names otherwise than by virtue of its provisions. In our opinion, s. 19 applies to names which in fact are borne by streets, whether given under s. 18 or not.

A.B.C.

5.—Private Street Works—*Frontage and benefit.*

The council wish to make up a private street under the Act of 1892, but as some of the plots have not only return frontages but also very large main frontages they are of the opinion that the straight frontage basis is inappropriate. They therefore decided to use degree of benefit, and instructed me to investigate the legal possibility of charging 50 *per cent.* according to rateable value and 50 *per cent.* according to area of plot. It is my opinion that this basis could not be sustained in face of objections from the frontagers on the following grounds:

(*a*) I find it difficult to see how the proposal has any relationship to benefit at all, and

(*b*) I do not see that the area of the plot is related to the frontage, as a similar area can be produced by a deep plot with a narrow frontage and by a wide plot with a short depth.

I have in mind a fairly recent case in which it was said that every degree of benefit apportionment must have some element of frontage, but the name of the case escapes me at the moment. Please say whether my conclusions are correct or, if they are at fault, where the fault lies.

Further, if you know of any approved method of relieving owners of plots with large frontages of their burden I would be glad if you would indicate it.

PABRIX.

Answer.

We agree that the proposed basis could not be sustained. Benefit may be assessed as between classes of premises such as dwelling-houses, shops, and industrial buildings. The benefit must then be apportioned strictly according to frontage and so also the burden: *see Parkstone Primrose Laundry, Ltd.* v. *Poole Corporation* (1950) 114 J.P. 354. Benefit as betweeen main frontages and return frontages in

the same street also appears to be permissible, but there would be no right to apportion benefit between long and short main frontages of buildings of the same class in the same street. This would be a mere contradiction of the frontage basis.

6.—Public Health Act, 1936—*Vesting of sewers—Sewer outside district of constructing council.*

Authority A propose to construct a new sewer, the terminal point of which would connect with a sewer in the district of authority B, with whom it is proposed to enter into a communication agreement under s. 28 of the Public Health Act, 1936. The new sewer, which would pass through a part of district B before reaching the terminal point, would be constructed at the expense of authority A.

1. Does the expression " any person " in s. 18 of the Act of 1936 include a local authority, so that the section could be used to vest in authority B that part of the sewer which would be constructed from their boundary to the point of connexion? or

2. Is this a case where the declaration provisions of s. 17 of the Act of 1936 should be used for such a purpose?

CUBE.

Answer.

In our opinion the word " person " bears its general statutory meaning. We see no legal obstacle to the first course.

7.—Rating and Valuation—*Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8—Golf course.*

I shall be obliged to have your opinion as to whether a golf course, owned and occupied for the purposes of a club which is not established or conducted for profit, comes within the definition of a playing field for the purposes of s. 8 (1) (*c*) of the above Act. Although a golf course would not normally be referred to as a playing field, it appears that from the definition of a playing field given in the section a golf course is classed as a playing field for the purposes of s. 8, since such a course is obviously land mainly used for the purposes of an open air game.

ASHBY.

Answer.

We agree, on the assumption that the club fulfils the further condition of not making a charge (except on special occasions) for the admission of spectators to the golf course.

8.—Road Traffic Acts—*Speed limit—Road in a built-up area—Two lamps more than* 200 *yds. apart—Speed not checked in that part of the road.*

B has been summoned for driving a motor vehicle at a speed exceeding 30 miles per hour on a road in a built-up area, contrary to the Road Traffic Act, 1934, s. 1. The road is situated in two urban districts, but is of a rural character. It is provided with a system of street lighting by means of lamps placed not more than 200 *yds.* apart. No order of " direction " is in force. The defending solicitor alleges that two of the lamps in the length of road are more than 200 *yds.* apart and, therefore, the whole of the road cannot be deemed to be " built-up." The lamps are in order on that portion of the road where the defendant's speed was checked, but further on two lamps are certainly more than 200 *yds.* apart. This arises on the edges of the boundaries of the two urban districts, where, apparently, there has been no co-ordination between the two authorities. Your opinion is sought as to whether the fact that if two lamps in the road are not in accordance with s. 1 (1) (*a*) of the above-mentioned Act the whole length of road is considered to be not " built-up."

J. LEGIT.

Answer.

The defendant appears to be charged with exceeding the speed limit in a length of road in which the lamps are not more than 200 *yds.* apart. By s. 34 (1) (*a*) of the 1934 Act this length of road is to be deemed to be a road in a built-up area.

We cannot see that the fact that in another length of the road there are two lamps which are more than 200 *yds.* apart is relevant or can have any effect in considering the matter.

9.—Shops Act—*Sunday sales—Supplies for caravan.*

The following is an extract from a letter from the National Caravan Council:

" Some two years ago my council took counsel's opinion as to whether or not caravan accessory supplies fall and were intended to fall within the word ' Motor ' in the Act and we were confirmed in our opinion that the legislature clearly intended to allow facilities for the sale of caravan accessories to travellers. It must be remembered that a trailer caravan is, after all, intended to be towed by a motor and it is, therefore, to a very large extent part of the motor and furthermore many of the accessories applicable to caravans are equally applicable to motors."

Examples of the articles which are sold as caravan supplies or accessories are a plastic roof light and fittings, a plastic-type sink and a solid fuel stove. Is the contention correct that caravan supplies or accessories are within the terms of para. 1 (*h*) of sch. 5 to the Shops Act, 1950?

SILLES.

Answer.

In the absence of authority, it is difficult to draw the line between those articles which may properly be described as motor supplies or accessories and those which may not, but we think it reasonable to treat the caravan as part of a motor vehicle (for the purpose of the Shops Act) when it is attached to a car for the purpose of being drawn, and some article such as a tyre, a lamp, or some article which is essential, if the caravan is to be on the road, is required. Such an article as a roof or a sink is, we think, not such an article, and cannot be described as a motor supply or accessory in the same sense as a tyre or a lamp. Surely the intention is to meet emergencies on the road and not to open the door widely to the sale of all sorts of articles used in caravans.

10.—Witnesses—*Withholding names and addresses.*

A person will shortly be before a local court upon a number of charges of sending postal packets (postcards) which have on the packet words which are grossly offensive, contrary to s. 11 (1) (*c*) of the Post Office Act, 1953. The prosecution intend to ask for the case to be committed to quarter sessions.

The two ladies to whom the postcards were addressed are anxious that if possible no publicity should be given to them but I have been unable to discover any statutory authority whereby the court can suppress the names and addresses of such witnesses. The case of *R.* v. *Mortimer* (1895) 60 J.P. 11, was referred to for a number of years in *Stone* but was omitted after the 1952 edn. (*see* note (*u*), p. 61). It was then cited as an authority that if it was considered to be in the interests of justice, a court could suppress the names and addresses of witnesses, such names and addresses being given in writing to the court and to the defence.

The omission of this case in further editions may have been due to the fact that it was included in a note regarding the then existing doubt whether an examining justice had to sit in open court. This doubt was resolved by s. 4 (2) of the Magistrates' Courts Act, 1952, and therefore the note in question was no longer appropriate. I can find no reference to *R.* v. *Mortimer* having been overruled or even cited and I shall be obliged if you will inform me whether you consider it still to be good law and also whether you know of any other means whereby the names and addresses of the witnesses may be kept out of the press.

SOMME.

Answer.

If the ladies in question are young persons the justices might prohibit the publication of their names and addresses under s. 39 of the Children and Young Persons Act, 1933. Otherwise there is no statutory authority to take such a course.

If the case proceeds as an indictable one the examining justices need not sit in open court and they may exclude the public and the press. We are in agreement with the learned editors of *Stone* on that point. (*See* their note (*k*) to s. 4 (2) of the Magistrates' Courts Act, 1952, on p. 43 of the 1955 edn.)

If the case proceeds as a summary one the justices must sit in open court and of course the press must be allowed to be present.

It is generally in the interests of justice that the public should know who has given evidence and to what effect. A witness should not be allowed to conceal his identity from the public merely because he may have to say something inconvenient. If the justices think, however, that there are good and weighty reasons for suppressing the name and address of a witness they may do so. In such a case the witness should write down his name and address and the defence should be allowed to see it. That practice is one that is often adopted, in summary as well as in indictable cases.

The case quoted as *R.* v. *Mortimer* is not a law report, but is merely a factual report of a case at Bow Street magistrates' court on December 23 and 31, 1895. It appears in our 1896 volume under the general heading " Miscellaneous Information." It was an indictable case and the learned magistrate allowed a witness to withhold his name and address and said that he would not allow any attempt to be made to force a witness to disclose his name and address if he feared the disclosure would in any way damage his business prospects. At the next hearing counsel stated that they had put the matter before Hawkins, J. (the Vacation Judge) at his private residence and that his lordship had said that the magistrate could hear the case with closed doors if he thought it would be in the interests of justice to do so. At the same time he thought it would be better to hear it in public, the names and addresses of witnesses being withheld at the discretion of the magistrate. He thought that if the names and addresses were given in writing there was nothing with which he could disagree.

We think that is still good law.

Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. 6d. per line and 3s. 6d. per displayed headline. Classified Advertisements, 24 words 6s. (each additional line 1s. 6d.) Box Number, 1s. extra *Latest time for receipt 2 p.m. Wednesday*

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NOTIFICATION OF VACANCIES ORDER, 1952

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. *Note :* Barristers, Solicitors, Local Government Officers, who are engaged in a professional, administrative or executive capacity, Police Officers and Social Workers are excepted from the provisions of the Order.

BOROUGH OF WIDNES

Town Clerk's Department

Appointment of Legal and General Clerk

APPLICATIONS are invited for the above appointment at a salary in accordance with Grade A.P.T. II of the National Scale of Salaries.

The successful candidate will be required to undertake work in connexion with the Council's Slum Clearance programme and to assist generally in the legal work of the Department. Applications, stating age, qualifications and experience, together with the names of two referees, must reach the undersigned not later than Thursday, February 2, 1956.

The appointment is subject to the National Scheme of Conditions of Service as adopted by the Council, the Local Government Superannuation Acts, and to one month's notice on either side.

Housing accommodation will be provided if needed.

FRANK HOWARTH,
Town Clerk.

Town Hall,
Widnes.
January 17, 1956.

CITY OF BIRMINGHAM

Appointment of Full-time Female Probation Officer

APPLICATIONS are invited for the appointment of a full-time female Probation Officer for the City of Birmingham.

The appointment and salary will be in accordance with the Probation Rules, 1949 to 1955. Candidates must be not less than 23 years nor more than 40 years of age, except in the case of a serving officer.

The post is superannuable and the selected candidate will be required to pass a medical examination.

Applications (in own handwriting) giving age, present position, general qualifications and experience, should be sent with copies of three recent testimonials to the undersigned not later than 14 days after the publication of this notice.

T. M. ELIAS,
Secretary to the Probation Committee.

Victoria Law Courts,
Birmingham, 4.

CITY OF BIRMINGHAM

Appointment of Full-time Male Probation Officer

APPLICATIONS are invited for the appointment of a full-time male Probation Officer for the City of Birmingham.

The appointment and salary will be in accordance with the Probation Rules, 1949 to 1955. Candidates must be not less than 23 years nor more than 40 years of age, except in the case of a serving officer.

The post is superannuable and the selected candidate will be required to pass a medical examination.

Applications (in own handwriting) giving age, present position, general qualifications and experience, should be sent with copies of two recent testimonials to the undersigned not later than 21 days after the publication of this notice.

T. M. ELIAS,
Secretary to the Probation Committee.

Victoria Law Courts,
Birmingham, 4.

BOROUGH OF STAFFORD

Deputy Town Clerk

Applications invited from Solicitors with Local Government experience. Salary Scale £1,151 13*s.* 4*d.* × increments of £35—£1,291, 13*s.* 4*d.* which is two-thirds of the Joint Negotiating Committee Salary Scale of the Town Clerk. Appointment determinable by two months' notice.

Applications, stating age, qualifications and experience, and the names of two persons to whom reference may be made to be sent to the undersigned not later than February 10, 1956.

T. BROUGHTON NOWELL,
Town Clerk.

Borough Hall,
Stafford.
January 23, 1956.

WEST RIDING AREA PROBATION COMMITTEE

Appointment of Male Probation Officer

APPLICATIONS are invited for the above whole-time appointment.

The officer would be centred at Keighley and assigned to the Borough of Keighley and the Petty Sessional Division of Bingley.

Applicants must be not less than 23 nor more than 40 years of age except in the case of whole-time serving officers and persons who have satisfactorily completed a course of training approved by the Secretary of State.

The appointment will be subject to the Probation Rules, 1949–1955, and will be superannuable, and the successful candidate will be required to pass a medical examination.

Application forms may be obtained from the Principal Probation Officer, 91 Northgate, Wakefield.

Applications, together with two recent testimonials, should be enclosed in a sealed envelope marked " Appointment of Probation Officer " and must reach the undersigned not later than February 18, 1956.

BERNARD KENYON,
Clerk to the Area
Probation Committee.

Office of the Clerk of the Peace,
County Hall,
Wakefield.

THE CITY OF PLYMOUTH

Appointment of Female Probation Officer

APPLICATIONS are invited for the appointment of a Full-time Female Probation Officer. Applicants must be not less than 23 years of age nor more than 40 years of age except in the case of serving Probation Officers. The appointment will be subject to the Probation Rules, 1949 to 1955, and the salary will be according to the scale prescribed by those Rules.

The successful applicant will be required to pass a medical examination and to commence her duties on June 1, 1956.

Applications, stating age, present position, qualifications and experience, together with copies of two recent testimonials, must reach the undersigned not later than February 11, 1956.

EDWARD FOULKES,
Secretary of the Probation Committee.

Justices' Clerk's Office,
Greenbank,
Plymouth.